

**MULTISTATE TAX COMMISSION**

**Resolution No. 00-6**

**Resolution Opposing S. 2401, “New Economy Tax Simplification Act”**

**WHEREAS**, Senator Judd Gregg of New Hampshire and Senator Herb Kohl of Wisconsin have introduced S. 2401, the “New Economy Tax Simplification Act (NETSA)”; and

**WHEREAS**, the bill would amend Public Law 86-272 to establish a new nexus standard in federal law for all business activity taxes as well as the collection of sales and use taxes; and

**WHEREAS**, efforts to define nexus in federal law by detailing the level of physical contacts required by a taxpayer will necessarily lead to lengthy and expensive litigation to determine the full meaning of such laws and to challenge their limits; and

**WHEREAS**, the established policy of the Multistate Tax Commission has been consistently and throughout its history against the creation of federal statutory definitions of nexus; and

**WHEREAS**, the bill is mischaracterized by those who would be favored by the bill as codifying the nexus standard set forth by the U.S. Supreme Court in *Quill v. North Dakota*; and

**WHEREAS** the U.S. Supreme Court held in *Quill* that physical presence is not required to establish state jurisdiction over a person under the Due Process Clause, but that “substantial nexus” is required under the Commerce Clause to require an interstate seller to collect tax; and

**WHEREAS**, the Court ruled that Congress is free under the Commerce Clause to allow the states to impose tax obligations on taxpayers even when they do not have substantial nexus with a particular taxing jurisdiction; and

**WHEREAS**, the bill establishes a requirement that a business have a “substantial physical presence” in state before it can be subjected to a business activity tax or use tax collection obligation; and

**WHEREAS**, the bill additionally establishes ten special conditions that would be deemed not to meet this substantial physical presence requirement; and

**WHEREAS**, these “carve-outs” include solicitation of orders for tangible or intangible personal property; presence or the use of intangible property in a State; use of the Internet to create or maintain a website accessible by persons in the State; use of an Internet service provider to maintain, take, or process orders via a website on a computer that is physically located in the state; use of a service provider to transmit communications (including cable, satellite, radio and telecommunications); and affiliation with a person in the State who is not an agent of the company; and

**WHEREAS**, defining nexus in federal law would upset the tenets of federalism and the system of shared authority and responsibilities long practiced by the federal and state governments; and

**WHEREAS**, the nexus definitions expressed in S. 2401 would establish favored categories of taxpayers and differentiate among groups of like taxpayers; now, therefore, be it

**RESOLVED**, that the Congress be urged to refrain from considering S. 2401.

**RESOLVED**, that the Multistate Tax Commission urges Congress refrain from enacting this or any other legislation that establishes nexus standards.

Adopted this 28<sup>th</sup> day of July 2000 by the Multistate Tax Commission.